

### Rules and Ancillary Document Review Checklist

(This form must be filled out electronically.)

All responses should be in **bold** format.

Document Reviewed (include title): **WAC 458-20-241**  
**Radio and television broadcasting**

Date last adopted: **April 30, 1983**

Reviewer: **JoAnne Gordon**

Date review completed: **November 7, 2000**

Is this document being reviewed at this time because of a taxpayer or business association request? (If "YES", provide the name of the taxpayer/business association and a brief explanation of the issues raised in the request). YES ☐ NO ☒

Type an “x” in the column that most correctly answers the question, and provide clear, concise, and complete explanations where needed.

**1. Explain the goal(s) and purpose(s) of the document:**

**WAC 458-20-241 discusses the application of the business and occupation (B&O) tax to advertising revenue and other income derived by radio and broadcasting businesses and the two methods by which broadcasters may apportion advertising revenue. The rule discusses the application of retail sales tax and use tax to consumer purchases. The rule also explains when radio and television broadcasting companies are responsible for collecting and reporting retail sales tax.**

## 2. Need:

YES	NO	
X		Is the document necessary to comply with the statutes that authorize it? (E.g., Is it necessary to comply with or clarify the application of the statutes that are being implemented? Does it provide detailed information not found in the statutes?)
	X	Is the document obsolete to a degree that the information it provides is of so little value that the document warrants repeal or revision?
	X	Have the laws changed so that the document should be revised or repealed? (If the response is “yes” that the document should be repealed, explain and identify the statutes the rule implemented, and skip to Section 10.)
X		Is the document necessary to protect or safeguard the health, welfare (budget levels necessary to provide services to the citizens of the state of Washington), or safety of Washington’s citizens? (If the response is “no”, the



		recommendation must be to repeal the document.)
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Please explain.

**3. Related ancillary documents, court decisions, BTA decisions, and WTDs: Complete** Subsection (a) only if reviewing a rule. Subsection (b) should be completed only if the subject of the review is an ancillary document. Excise Tax Advisories (ETAs), Property Tax Bulletins (PTBs) and Audit Directives (ADs) are considered ancillary documents.

(a)

YES	NO	
	X	Are there any ancillary documents that should be incorporated into this rule? (An Ancillary Document Review Supplement should be completed for each and submitted with this completed form.)
	X	Are there any ancillary documents that should be repealed because the information is currently included in this or another rule, or the information is incorrect or not needed? (An Ancillary Document Review Supplement should be completed for each and submitted with this completed form.)
	X	Are there any Board of Tax Appeal (BTA) decisions, court decisions, or Attorney Generals Opinions (AGOs) that provide information that should be incorporated into this rule?
	X	Are there any administrative decisions (e.g., Appeals Division decisions (WTDs)) that provide information that should be incorporated into the rule?

(b)

YES	NO	
		Should this ancillary document be incorporated into a rule?
		Are there any Board of Tax Appeal (BTA) decisions, court decisions, or Attorney Generals Opinions (AGOs) that affects the information now provided in this document?
		Are there any administrative decisions (e.g., Appeals Division decisions (WTDs)) that provide information that should be incorporated into the document?

If the answer is “yes” to any of the questions in (a) or (b) above, identify the pertinent document(s) and provide a brief summary of the information that should be incorporated into the document.

**ETA 521.04.241 explains that the standard deduction for 1982, based on the latest figures provided by the Federal Communications Commission (FCC) is .62 or 62 percent. WAC 458-20-193, effective April 30, 1983 was written after the ETA was issued. The rule explains that as the FCC no longer collects the data on which the standard deduction is based, the industry itself is responsible for providing the data to the Department. As a practical matter, the Department has since allowed radio and television broadcasters to use a standard deduction of 62 percent. The ETA should be retained at this time.**

**4. Clarity and Effectiveness:**

YES	NO	
X		Is the document written and organized in a clear and concise manner?
X		Are citations to other rules, laws, or other authority accurate? (If no, identify the incorrect citation below and provide the correct citation.)
X		Is the document providing the result(s) that it was originally designed to achieve? (E.g., does it reduce the need for taxpayers to search multiple rules or statutes to determine their tax-reporting responsibilities, help ensure that the tax law and/or exemptions are consistently applied?)
	X	Do changes in industry practices warrant repealing or revising this document?
	X	Do any administrative changes within the Department warrant repealing or revising this document?

Please explain.

**5. Intent and Statutory Authority:**

YES	NO	
X		Does the Department have sufficient authority <b>to adopt</b> this document? (Cite the statutory authority in the explanation below.)
X		Is the document consistent with the legislative intent of the statutes that authorize it? (I.e., is the information provided in the document consistent with the statute(s) that it was designed <b>to implement</b> ?) If “no”, identify the specific statute and explain below. List all statutes being implemented in Section 9, below.)
X		Is there a need to recommend legislative changes to the statutes being implemented by this document?

Please explain.

**RCW 82.32.300, Department of Revenue to Administer, provides the Department with the general authority to “make and publish rules and regulations” as necessary for the reporting of taxes imposed under the various chapters of Title 82 RCW.**

**Radio and television broadcasters are currently subject to different tax applications than other media forms. While it is constitutionally permissible to tax different kinds of media differently, doing so may not represent sound tax policy.**

**As written, the rule does not reflect how radio and television broadcasting businesses currently conduct business. RCW 82.04.280 allows broadcasters to deduct amounts for national, network, and regional advertising from gross income. The statute allows the deduction to be based on either a national average of network, regional and national advertising established by the Federal Communications Commission or an individual formula based on actual revenue. With respect to the standard deduction, the FCC no longer gathers the data necessary to establish the national average. In addition, regardless of whether which method a broadcasters chooses to determine the amount of**



**the deduction, neither method reflects the various technological changes altering the manner in which the industry operates.**

**6. Coordination:** Agencies should consult with and coordinate with other governmental entities that have similar regulatory requirements when it is likely that coordination can reduce duplication and inconsistency.

YES	NO	
	X	Could consultation and coordination with other governmental entities and/or state agencies eliminate or reduce duplication and inconsistency?

Please explain.

**RCW 82.32.300, Department of Revenue to Administer, provides the Department with the general authority to “make and publish rules and regulations” as necessary for the reporting of taxes imposed under the various chapters of Title 82 RCW.**

**7. Cost:** When responding, consider only the costs imposed by the document being reviewed and not by the statute.

YES	NO	
	X	Have the qualitative and quantitative benefits of the document been considered in relation to its costs? (Answer “yes” only if a Cost Benefit Analysis was completed when the rule was last adopted or revised.)

Please explain.

**As an interpretive rule, WAC 458-20-241 does not impose administrative burdens that are not required by law.**

**8. Fairness:** When responding, consider only the impacts imposed by the document being reviewed and not by the statute.

YES	NO	
X		Does the document result in equitable treatment of those required to comply with it?
	X	Should it be modified to eliminate or minimize any disproportionate impacts on the regulated community?
	X	Should the document be strengthened to provide additional protection to correct any disproportionate impact on any particular segment of the regulated community?

Please explain.

**9. LISTING OF DOCUMENTS REVIEWED:** (Use “bullets” with any lists, and include documents discussed above. Citations to statutes, ancillary documents, and similar documents should include titles. Citations to Attorneys General Opinions (AGOs) and court, Board of Tax Appeals (BTA), and Appeals Division (WTD) decisions should be followed by a brief description (i.e., a phrase or sentence) of the pertinent issue(s).)





Statute(s) Implemented: **The following statutes are implemented to the extent they apply to radio and television broadcasters.**

<b>RCW 82.04.030</b>	<b>“Person,” “company.”</b>
<b>RCW 82.04.040</b>	<b>“Sale,” “casual or isolated sale.”</b>
<b>RCW 82.04.050</b>	<b>“Sale at retail,” “retail sale.”</b>
<b>RCW 82.05.060</b>	<b>“Sale at wholesale,” “wholesale sale.”</b>
<b>RCW 82.04.070</b>	<b>“Gross proceeds of sale.”</b>
<b>RCW 82.04.080</b>	<b>“Gross income of the business.”</b>
<b>RCW 82.04.090</b>	<b>“Value proceeding or accruing.”</b>
<b>RCW 82.04.150</b>	<b>“Engaging in business.”</b>
<b>RCW 82.04.190</b>	<b>“Consumer.”</b>
<b>RCW 82.04.200</b>	<b>“In this state,” “within this state.”</b>
<b>RCW 82.04.220</b>	<b>Business and occupation tax imposed.</b>
<b>RCW 82.04.240</b>	<b>Tax on manufacturers</b>
<b>RCW 82.04.250</b>	<b>Tax on retailers.</b>
<b>RCW 82.04.270</b>	<b>Tax on wholesalers, distributors.</b>
<b>RCW 82.04.280</b>	<b>Tax on . . . radio and television broadcasting . . .</b>
<b>RCW 82.08.010</b>	<b>Definitions.</b>
<b>RCW 82.08.020</b>	<b>Retail sales tax imposed.</b>
<b>RCW 82.12.010</b>	<b>Definitions.</b>
<b>RCW 82.12.020</b>	<b>Use tax imposed.</b>

Ancillary Documents (i.e., ETAs, PTBs, and ADs):

**ETA 521.04.241, 1982 Standard deduction-radio and television broadcasting**

Court Decisions:

Board of Tax Appeals Decisions (BTAs):

**BTA Docket No. 80-28 sustained the Department’s previous determination that the taxpayer, a professional football team, was subject to business and occupation tax under the service and other activities classification with respect to revenue derived from radio and television contracts. The taxpayer was not entitled to the lower rate for the radio and television-broadcasting classification as it was not a broadcaster. The taxpayer did not become a radio and television broadcaster simply as a result of a joint venture agreement with a broadcaster.**

**BTA Docket No. 54675 provided that live or secondary feed transmissions performed for a television or radio station qualifies for the lower business and occupation tax treatment as radio and television broadcasting. The taxpayer provided traffic reports to a broadcaster.**



Administrative Decisions (e.g., WTDs):

**1 WTD 85, for the purpose of determining whether advertising is local, regional, or national, explains that a “sponsor” is the business that pays the broadcaster or advertising agency for advertising its business.**

**4 WTD 135, a taxpayer using, in part, its own equipment to transmit client advertising on a cablevision network during purchased timeframes, functioned as a cablecaster and was subject to business and occupation tax under the radio and broadcasters classification.**

**11 WTD 113 concluded that the creation of a one-of-a-kind master videotape is a service activity. Determination simply references WAC 458-20-241.**

**11 WTD 219 explains that the production of a training video is a service activity and is not subject to sales tax. Determination simply references WAC 458-20-241 when discussing the creation of a one-of-kind master tape.**

**12 WTD 519 explains that although the taxpayer, a producer of master programming, was not a broadcaster, WAC 458-20-241 provided guidance. Income derived from the creation of an original master tape of programming was subject to business and occupation tax under the service and other activities classification. The production of copies or dubs from the master tape was a manufacturing activity subject to the manufacturing business and occupation tax and use tax on the value of the programmed tape. For the purpose of determining the value, the cost basis was appropriate because the taxpayer shipped the programs outside the state without prior sale. The cost to produce included the amount of copyright fees. The service and other activities classification applied to income derived from fees for providing programming to specific clients. The taxpayer was not a radio or television broadcaster. Nor was such income taxable as network telephone services.**

**15 WTD 078 explains that income derived from a bartering arrangement, the exchange of advertising sold by a program’s syndicator for the license to air programming, is subject to business and occupation tax. Such income is allowed the deduction for nation, network, and regional advertising.**

**15 WTD 92, a graphic designer protested the Department’s reclassification of income from design services as selected business services. Taxpayer argued that services were provided as “a part of broadcast or print advertising,” and therefore excluded from definition. Determination narrowly construed the exclusionary language. Determination merely referenced WAC 458-20-241.**

Attorney General’s Opinions (AGOs):



Other Documents (e.g., special notices or Tax Topic articles, statutes or regulations administered by other agencies or government entities, statutes, rules, or other documents that were reviewed but were not specifically relevant to the subject matter of the document being reviewed):

**10. Review Recommendation:**

\_\_\_\_\_ Amend

\_\_\_\_\_ Repeal

—**X**— Leave as is

\_\_\_\_\_ Begin the rule-making process for possible revision. (Applies only when the Department has received a petition to revise a rule.)

\_\_\_\_\_ Incorporate ancillary document into a new or existing rule. (Subject of this review must be an ancillary document and not a rule.)

**Explanation of recommendation:** (If recommending an amendment of an existing rule, provide only a brief summary of the changes you've identified/recommended earlier in this review document.)

**There is no need to revise this rule at this time. The Department should consider proposing legislation that imposes tax in a manner consistent with current business practices. This legislation, to the extent possible, should not distinguish between the different forms of media businesses.**

**11. Manager action:** Date: \_\_\_\_\_

\_\_\_\_\_ Reviewed recommendation      \_\_\_\_\_ Accepted recommendation

\_\_\_\_\_ Returned for further action

Comments: